

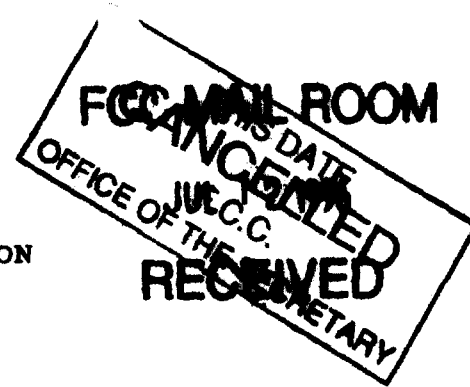
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Federal Communications Commission
Office of Secretary

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554



In The Matter Of

Examination of Current Policy)
Concerning the Treatment of) GC Docket No. 96-55
Confidential Information)
Submitted to the Commission)

To: The Commission

REPLY COMMENTS

Thompson Hine & Flory P.L.L. (TH&F), pursuant to Section 1.415 of the Commission's Rules, hereby files its Reply Comments in the above-captioned proceeding concerning treatment of confidential information submitted to the Commission by regulated entities and others. In support thereof, TH&F states as follows:

1. The theme of TH&F's comments, submitted on June 14, 1996, is that regulated entities who provide competitively sensitive information to the Commission need immediate certainty that the information they deliver will be accorded the highest degree of confidentiality. Confidentiality is especially appropriate in the face of the increased competition in the telecommunications industry. With near unanimity, this theme was repeated by the other commenters.

2. For example, SBC Communications Inc. states that "[a]s competition increases, all business data becomes increasingly sensitive, and the need for confidential treatment expands exponentially. If the Commission is to ensure that competition is reasonable and equitable, then parties must be given the opportunity to protect their proprietary data." See Comments of

SBC Communications Inc., Page 15. GTE Service Corporation also noted:

More so than at any time in the past, GTE is concerned about the potential for Commission proceedings to be used by parties as vehicles for obtaining sensitive information regarding existing and potential competitors. There can be no dispute that the more information a company has regarding its competitors, the more effectively that company can compete.

See Comments of GTC, Page 2.

Finally, Ameritech, et. al. (the "Joint Parties") state that "as competition for telecommunications services increases, it would be a grave mistake for the Commission to decrease the protection afforded to confidential information." See Comments of Joint Parties at Page 5 (emphasis in original). Along with these and other commenters, TH&F shares the belief that, except in unique circumstances, the danger of disclosure of confidential business information to competitors outweighs any public interest concerns addressed in the Freedom of Information Act (FOIA) and similar federal statutes.

3. General Communication, Inc. ("GCI") is one of the few commenters who oppose greater confidentiality and seek greater access to information submitted by regulated entities to the Commission. TH&F disagrees with such a position. GCI, by its own admission, is involved in a Commission proceeding wherein it has sought a cost allocation plan and tariff information from

AT&T/Alascom, Inc. See GCI Comments at Pages 5-6.¹ The Commission previously ruled that the information requested by GCI from AT&T/Alascom, Inc. is protected under FOIA Exemption 4 (Id. at 6, n. 15) which protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." Consequently, GCI, like many Commission licensees, has a private interest in obtaining confidential business records submitted to the Commission by regulated entities. Along with nearly all of the other commenters, TH&F submits that a Commission licensee's submissions to the Commission merit a greater degree of confidentiality than that previously provided by the Commission.

4. In addition, the important distinction between information required for "meaningful participation in a rulemaking" (as suggested by GCI) and information sought for one's own private interest must be recognized. The focus of any analysis, when a party disputes a claim for confidentiality, must be whether the information sought in the FOIA request is sought for rulemaking purposes or a public interest purpose other than the requesting party's own private gain. The facts and circumstances surrounding each individual request for

¹ Time Warner Communications Holdings, Inc. ("TWComm") is another commenter who opposes any attempt by the Commission to expand the confidentiality rules. TWComm is also involved in litigation before the Commission concerning certain cost support data which Cincinnati Bell and Southwestern Bell has claimed to be confidential. See TWComm Comments at Page 5. Therefore, like GCI, TWComm has a private interest in reviewing the records that Cincinnati Bell and Southwestern Bell claim to be confidential. Its Comments must be considered in light of this private interest.

confidentiality must be examined in detail, with all due deference given to the submitting party, when the regulated entity asserts that the information is competitively sensitive. See Comments of National Cable Television Association, Inc. at Page 2 ("[The Commission] should retain the flexibility to tailor confidentiality requirements to the facts before it, to prevent overly broad disclosure requests, and to prevent abuse of its regulatory processes ")

5. Finally, for the reasons stated in its Comments, TH&F strenuously objects to MCI Telecommunications Corporation's request that the Commission adopt a rule whereby the party requesting confidentiality bear the burden of proof when challenges are made to the confidentiality request. See MCI Comments, Page 5. In this era of increased competition, the party seeking confidential records must meet the high burden of proving that these records are needed for public interest purposes and not merely for the requesting party's own pecuniary benefit. This is particularly true in light of the fact that "[o]nce competitively sensitive information is released outside the Commission, the submitting company has no ability to control how the information is used or misused." See Comments of Cincinnati Bell Telephone Company at Page 2. Thus, the burden

should be placed squarely upon the party that seeks the information, not the party whose confidential business information will be disclosed.

Respectfully submitted,

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